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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91206789
Party	Defendant Don'Juan Gross
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Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	12/20/2012
Attachments	ansIN THE UNITED STATES PATENT AND TRADEMARK OFFICE.pdf (4 pages)(257568 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL APPEAL BOARD**

THE MATTER OF UNITED STATES TRADEMARK APPLICATION SERIAL No. 85/588,301

BBK TOBACCO & FOODS, LLC
Opposer,

V.

Don'Juan Gross
Applicant,

Opposition No. 91206789

Mark: SMOKE OF ART

Serial No. 85/588,301

ANSWER TO NOTICE OF OPPOSITION

Applicant, Don'Juan Gross, (hereinafter "Applicant"), hereby answers Opposer's, BBK Tobacco & Foods, LLC. (hereafter "BBK") complaint in opposition to Applicant's application to register "SMOKE OF ART" (herein "Applicant's mark") and alleges as follows:

1. The allegations of paragraph 1 of the Notice of Opposition are not admitted as to the date of Opposer's May 22, 2012, save that Applicant filed the noted application on April 3, 2012.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Notice of Opposition.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Notice of Opposition.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the Notice of Opposition.

5. Applicant denies the allegations of paragraph 5 of the Notice of Opposition.

6. Applicant is without knowledge or information sufficient to form a belief

as to the truth of the allegations set forth in paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations of paragraph 7 of the Notice of Opposition.

In addition, Applicant sets forth the following Affirmative Defenses and Statements in support of its position:

AFFIRMATIVE DEFENSES

A. BBK does not use Applicant's mark, "SMOKE OF ART" on any of the following goods in interstate commerce; cigar boxes of precious metal; Cigar cases; Cigar cases of precious metal; Cigar cutters; Cigar holders; Cigar holders of precious metal; Cigar humidifiers; Cigar lighters; Cigar tubes; Cigar wraps; Cigars; Filtered cigars; Holders for cigars of precious metal; Holders for cigars; Cigars, Cigar and cigarette boxes; Cigar and cigarette boxes not of precious metal; Cigar boxes of precious metal; Cigar boxes; Cigar boxes not of precious metal; Cigar boxes

B. Applicant's first use anywhere of the mark "SMOKE OF ART" was on or before February 26, 2012; Applicant's first use in commerce was June 12, 2012.

C. Applicant's mark "SMOKE OF ART" does not share a similar identity to BBK's mark "THE ART OF SMOKING."

D. Upon information and belief, as of the date of this opposition, BBK's "THE ART OF SMOKING" Registered Trademark No. 3267629 consist the following list of Goods in International Class 034. First use: First Use: 2000/07/20 First Use In Commerce: 2000/07/25 Cigarette papers; Cigarette rolling machines; Cigarette rolling papers; Cigarette tubes; Hand-rolling tobacco; Machines allowing smokers to make cigarettes by themselves; Roll your own tobacco; Rolling tobacco; Tobacco filters; Tobacco pipe

cleaners; Tobacco pouches.

E. Applicant's mark "SMOKE OF ART" is not in direct competition with goods listed in BBK's Registered Trademark No. 3267629.

F. Applicant's mark "SMOKE OF ART" and BBK's "THE ART OF SMOKING" is not pronounced identically.

G. Registration of Applicant's application with goods as specified is not likely to cause confusion, deception and mistake, and will not seriously damage BBK.

H. Upon information and belief, since on or before May 22, 2012, Applicant's filing date, BBK did not have a cigar bearing the mark "SMOKE OF ART" or "THE ART OF SMOKING" in interstate commerce.

WHEREFORE, Applicant requests that the Opposition be dismissed with prejudice; that the application number 85/588,301 be passed to issuance; and that the Applicant be awarded such other relief as the Trademark Trial and Appeal Board shall deem just and proper.

Respectfully Submitted,
/donjuangross/
Applicant
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Certification of Service

I hereby certify that a copy of the foregoing Answer dated 12/20/2012 includes corrections to Applicant's Answer to Notice of Opposition which was forwarded via email and regular first class U.S. Mail to the Opposer's counsel on September 5, 2012. A copy of this Answer to Notice of Opposition was forwarded via email and regular first class U.S. Mail to Opposer's General Counsel on December 20, 2012 to:

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Applicant